

REMARKS

As an initial matter, Applicant corrects a numbering error (the second occurrence of reference number 30 should be --36-- and reference number 36 should be --38-- in Figure 3. A replacement sheet is enclosed herewith. No new matter has been added. The Examiner is respectfully requested to acknowledge the drawing correction in any future correspondence.

It is noted with appreciation that claims 61 and 63-70 are indicated as being allowable. In addition, it is noted that claims 1, 3-10, 21, 23-30, 41 and 43-50 would be allowable if rewritten or amended to overcome the rejections of 35 U.S.C. § 112, first paragraph.

In response to the Office Action dated June 21, 2005, claims 1, 3-10, 21, 23-30, 41, 43-50, 61, 63-70 and 81-90 are pending. Claims 2, 11-20, 22, 31-40, 42, 51-60, 62 and 71-80 have been canceled.

During a May 20, 2005 telephone interview with the Examiner, the Applicant's representative was informed of a restriction requirement. The restriction requirement was made between claims 1, 3-10, 21, 23-30, 41, 43-50, 61 and 63-70 comprising a first group, Group I, and claims 81-90, which comprised a second group, Group II. The Examiner indicated that the claims of Group I are drawn to computer-to-computer data framing, classified in class 703, subclass 236. The claims of Group II were indicated as being drawn to the subject matter of congestion avoiding, classified in class 709, subclass 235. During the telephone interview, Applicant's representative elected Group I comprising claims 1, 3-10, 21, 23-30, 41, 43-50, 61 and 63-70 with traverse. In the Office Action received June 21, 2005, the inventions of Groups I and II are allegedly related as combination and sub-combination. The Office Action asserts that the combination as claimed does not require the particulars of the subcombination as claimed because in Group I, packets are prioritized for retransmission according to frame content, meaning whether the packet is a frame packet or a differential packet. The Group II is a subcombination that has separate utility such as determining congestion window size for transmitting a number of packets.

Applicants respectfully request withdrawal of the restriction requirement because, as pointed out in Applicants' previous response, claims 81-90 recite substantially similar limitations as claims 5-10, 25-30, 45-50 and allowed claims 65-70. A separate rejection of these original claims was set forth in the prior Office Action. Therefore, it would not be an undue burden on the Examiner to examine the features recited in independent claims 81 and 86 and the claims that depend therefrom, since this subject matter has already been separately searched and examined.

Claims 1, 3-10, 21, 23-30, 41 and 43-50 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement because claim 1 recited a step of "classifying" individual packets, but the word "classifying" was not found in the specification. Rather, as noted in the Office Action, the specification describes "designating" packets.

The term "classify" means to assign to a category, while the term "designate" means to distinguish as to class, Webster's New Collegiate Dictionary at pp. 205 and 305 (1981). As can be seen, the definitions of the two words are sufficiently similar that one of ordinary skill in the art would understand that the claimed recitation corresponds to the disclosed designation of packets.

As set forth in MPEP §2163.02, subject matter need not be described literally (i.e. in the same terms or *in haec verba*) in order to satisfy the written description requirement. Hence, the absence of the word "classifying" in the specification does not violate the requirements of the statute.

Although, Applicants believe the claimed feature is enabled by the specification and that the subject matter is satisfactorily described in the specification, Applicants have amended the claim to expedite the prosecution. Since the terms "classifying" and "designating" are substantially related terms, the amendment to the claims does not narrow or, otherwise, limit the scope of the claims.

Withdrawal of the rejection and allowance of the claims is respectfully requested.

Should any residual issues exist, the Examiner is invited to contact the undersigned listed below.

Respectfully submitted,

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